

IN THE MATTER OF

A Complaint made under Section 34(1) of the Professional Accountants Ordinance (Cap. 50) ("PAO")

BETWEEN

The Practice Review Committee of the Hong Kong Institute of Certified Public Accountants COMPLAINANT

AND

Mr. NG, Tsz Wing RESPONDENT
(Membership no. A15912)

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants

Members: Mr. MAURELLET Jose-Antonio, S.C. (Chairman)

Ms. LAU Yuk Kuen

Miss LEE Wai Fun, Stella

Ms. LEUNG Chi Ying

Mr. MAN Mo Leung

ORDER & REASONS FOR DECISION

Introduction

1. This is a complaint made by the Practice Review Committee ("PRC") of the Hong Kong Institute of Certified Public Accountants (the "Institute") against Ng, Tsz Wing (the "Respondent"), who is the sole shareholder of Ken T.W. Ng CPA Limited (Corporate Practice no.: S0531) (the "Practice"). The Practice was subject to its first practice review in May 2017.
2. As set out in a letter from the Executive Director on behalf of the PRC dated 7th January 2019 (the "Complaint"), at the time of the practice review, the Respondent, being the sole practising director who issued audit reports in the name of the Practice, was responsible for the Practice's quality control system and quality of assurance engagements.
3. The Practice had one non-qualified audit staff and engaged two corporate sub-contractors to perform its audits. During the relevant period, the Practice had issued audit reports to approximately 130 audit clients. 53 of these clients were referred by the subcontractors; and the subcontractors assisted in the performance of the audits of these 53 clients.

4. The practice reviewer ("Reviewer") identified a number of significant deficiencies in the Practice's system of quality control and assurance engagements indicating that the Respondent had failed to comply with professional standards.
5. The Reviewer also found that the Respondent failed to comply with the fundamental principle of professional competence and due care under the *Code of Ethics for Professional Accountants*. The nature and seriousness of the Respondent's multiple failures amount to professional misconduct.
6. The Complaints are divided under 4 broad headings we reproduce below.

The Complaints

Complaint 1

Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply a professional standard for his failure to maintain professional knowledge and skill at a level required to ensure that Clients AE 1 to AE 7 received competent professional services.

Complaint 2

Section 34(1)(a)(vi) applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply a professional standard for his failure to maintain an adequate quality control system in the Practice.

Complaint 3

Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply professional standard(s) when carrying out the audit of the financial statements of a company (Client WK) for the year ended 31 March 2016.

Complaint 4

Section 34(1)(a)(viii) of the PAO applies to the Respondent in that his non-compliances as stated in Complaints 1 to 3 above amount to professional misconduct.

7. The facts and circumstances relied upon by the Complainant are set out in paragraphs 3 to 6 in the Complaint.
8. We do not consider it necessary to delve into these for the self-explanatory reasons further set out below.

The Proceedings

9. It suffices to say that on 12th February 2019, the Respondent has by his admission form admitted to the Complaints set out against him by the

Complainant.

10. Before July 2019, it was suggested by the Respondent that because he had proceeded without the benefit of legal advice, he might have unwittingly and mistakenly made certain representations as to what he was prepared to accept in terms of sanction and costs.
11. We are prepared to proceed on the basis of the evidence and the submissions now before us.
12. In particular we have carefully considered the comprehensive submissions made on the Respondent's behalf by his solicitors in particular those set out in their letter to the clerk to the Disciplinary Committee dated 16th August 2019 ("R's Letter").
13. While the Respondent acknowledges to the infringing conduct, he has by his letter dated 26th February 2018 promised to engage in a series of future actions or remedial measures to ensure he will meet all the standards required. These are set out in paragraphs 4 to 17 of R's letter and we do not set out the same here.
14. We have considered the personal circumstances of the Respondent in particular his family circumstances highlighted in paragraphs 18 to 23 of R's letter, as well as the fact he has been co-operative and admitted early on the complaints, as well as taken steps to ensure that this will not occur again.
15. We indeed hope that the Respondent has through this incident learned a lesson.
16. We accept that the Respondent has not received significant material gains for his breaches of conduct.

Order of the Disciplinary Committee; Sanctions and Costs

17. In considering the proper order to be made in this instance, the Disciplinary Committee had had regard to all of the above matters as well as the other matters urged upon us by the Respondent as well as the Complainant.
18. Any sanction imposed must appropriately reflect the seriousness of the breach as well as sufficient to maintain the public's confidence in the ethics of the profession.
19. It is not disputed by the Respondent that he should bear the costs of the Institute and we so order.
20. The main area of the dispute is whether the Respondent's practising certificate should be suspended and if so, for how long.
21. Whilst the Complainant by reference to earlier decisions where the suspension of practising certificate was one year and slightly longer suggests the present case falls in that bracket, the Respondent submitted that this would be

“completely disproportional to the ‘crime’ in light of the mitigating factors” which exist in the present case.

22. The Respondent also seeks to distinguish the facts of the present case with some of the factors which existed in the cases cited by the Complainant.
23. In our view, while it is helpful to have regard to previous decided cases there is a limit to the usefulness of the exercise as each case is inevitably different from an earlier case.
24. We tend to think that the facts of the present case are perhaps not quite as serious as those in the 2 cases cited by the Complainant.
25. We are however unable to agree to the Respondent’s suggestion that no suspension of practising certificate should be ordered in the present case or that “the maximum suspension period should be no more than 1 month”.
26. Having considered the facts of the present case and the parties’ submissions made and recognising that there are some strong personal mitigating circumstances, the Disciplinary Committee orders that:
 - (1) The Respondent’s practising certificate be cancelled effective from 42 days from the date hereof under section 35(1)(da) of the PAO;
 - (2) A practising certificate shall not be issued to the Respondent for a period of 4 months effective from 42 days from the date hereof under section 35(1)(db) of the PAO; and
 - (3) The Respondent do bear the costs and expenses incidental to the proceedings in the sum of HK\$55,477 under section 35(1)(iii) of the PAO.

Dated the 23rd day of October 2019.

Mr. MAURELLET Jose-Antonio, S.C.
Chairman

Ms. LAU Yuk Kuen
Member

Ms. LEUNG Chi Ying
Member

Miss LEE Wai Fun, Stella
Member

Mr. MAN Mo Leung
Member